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REMARKS

Applicants hereby affirm the provisional election, made by Dr. Jonathon Narita on August 22, 2005, of the subject matter of Group I, claims 1, 2, 5 and 6-13, SEQ ID NOs:1, 13-21. This election was made without traverse and is subject to Applicants' right to pursue the non-elected subject matter in a divisional or divisional applications pursuant to 35 USC §121.

Claims 3 and 4 have been cancelled as being withdrawn from consideration due to the restriction requirement.

No amendment of inventorship is warranted at this time due to the cancellation of claims 3 and 4.

The Abstract has been revised to address the objection set forth on page 5 of the Office Action.

Claims 5-13 have been amended to correct the dependencies.

Applicants note with appreciation that SEQ ID NOs:1 and 13-21 are free from the prior art and that Claim 2 will be allowed after it is amended to delete non-elected SEQ ID NO:22. Claim 2 has been amended to deleted the non-elected sequence.

Claims 1 and 5-13 were rejected under 35 USC §112, first paragraph, ". . . does not reasonably provide enablement in the claimed method using said construct in tissues other than seed."

Attention is kindly invited to page 16 of the specification at lines 3-7:

The bacterial GUS gene can be successfully expressed in *Arabidopsis* embryos (see Figures 1 and 2). Furthermore, a gene encoding delta-6 desaturase from *M. alpina* also successfully expressed by this promoter in transgenic soybeans, as depicted in Figure 4. This further validates the application of the annexin, or P34, promoter of the invention in plant genetic engineering practice.

Example 3 on page 21 demonstrates that the soybean annexin and P34 promoters are functional in soybean somatic embryos to produce a novel fatty acid, GLA. Gamma-linolenic acid (GLA; 18:3, delta-6,9,12) is an essential fatty acid found in mammals. GLA is the metabolic intermediate for very long-chain omega-6 fatty acids and for various active molecules. In mammals, formation of long-chain PUFAs is rate-limited by delta-6 desaturation.

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Thus, Example 3 demonstrates that no undue experimentation would be needed to produce transgenic soybean seed comprising regulating expression of a heterologous nucleic acid fragment encoding an enzyme related to production of at least one long chain polyunsaturated fatty acid.

The claims have been amended to clarify that the promoter is intended to drive expression in seeds and not tissues other than seed.

In view of the above discussion and claim amendments, it is respectfully submitted that the claims are commensurate in scope with the teachings of the specification. Accordingly, withdrawal of the rejection of claims 1 and 5-13 under 35 USC §112, first paragraph, as lacking enablement is respectfully requested.

Claims 1 and 5-13 were rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. It is stated on page 11 of the Office Action that "The specification does not teach structures of all other possible species with identical function as encompassed by claim 1 and claims dependent therefrom. The specification does not describe functional domains of all such possible structures. . . ."

The Guidelines for Examination of Patent Applications Under the 35 USC §112, paragraph 1, "Written Description" Requirement, 66 Fed. Reg. (Jan. 5, 2001) do not require that all possible species be disclosed. Indeed, the law and the guidelines look to a recitation of whether a **representative** number of species has been disclosed either explicitly or implicitly. What constitutes a representative number depends on whether one of skill in the art would recognize that Applicants were in possession of the necessary common attributes or features of the elements possessed by the members of the genus in view of the species disclosed or claimed.

Attention is kindly invited to Example 4 spanning pages 21-11. Example 4 concerns the identification of seed-specific consensus elements in annexin and P34 promoters.

It is stated that:

The soybean annexin promoter contains the consensus core promoter sequences known as CCAAT box, TATA box and transcription start site. The annexin promoter also contains several seed-specific/ABA responsive elements, such as the RY-G-box seed-specific coupling elements (CATGCAA, CATGCCT, CATGCAG, CTACGTCA, TAACGTGC), ACAC elements (CCTACACTCT, CCAACACTGG,

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TATACACTCC, TGTACACATA, TTCACACCAT, ACAACACTTT, CTAACACGAT), GTGT elements (ATGGTGTTTA, GTAGTGTGAA, AATGTGTTAT, CATGTGTAAA) and AT-rich sequences. All these conserved elements, individually or in combination, can be very important for the temporal and tissue-specific gene expression of the soybean annexin promoter. (Emphasis added.)

Reliance upon Clark et al. is misplaced because even though annexin polypeptides are known to be present in seeds, the promoters responsible for expression of these polypeptides, and the developmental timing of these promoters, had not been previously described. (Specification, page 12 at lines 33-35). The Clark et al. article does nothing more than discuss annexin polypeptides and the genes encoding the polypeptides. An annexin promoter is not taught or discussed, let alone, a seed-specific annexin promoter.

Information is provided in the specification on pages 13-14 how one of ordinary skill in the art could readily isolate a plant annexin pr P34 promoter from any plant following the procedure set forth therein.

Example 3 set forth, on page 21 of the specification, results demonstrating that the soybean annexin promoter is functional in soybean somatic embryos to produce GLA, an intermediate in the pathway for making long chain polyunsaturated fatty acids.

In view of the foregoing, it is respectfully submitted that the specification does provide an adequate written description demonstrating to one skilled in the art that Applicants were indeed in possession of the claimed invention at the time that the instant application was filed.

Accordingly, withdrawal of the rejection of claims 1 and 5-13, under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Is respectfully requested.

It is respectfully submitted that the claims are in form for allowance which allowance is respectfully solicited.

A Petition for a Two (2) Month Extension of Time accompanies this response.

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Please charge any fees or credit any overpayment of fees which are required in connection with the filing of this Response to Deposit Account No. 04-1928 (E. I. du Pont de Nemours and Company).

Respectfully submitted,



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